IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13558 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGRICULTURE PRODUCE MARKET COMMITTEE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13558 of 2003

MR KS JHAVERI for Petitioner No. 1-2

MS NANDINI JOSHI, AGP for Respondent No. 1-3

..... for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 23/12/2003

ORAL JUDGEMENT

In this petition filed on September 12, 2003 under Article 226 of the Constitution of India, the petitioner Agriculture Produce Market Committee had prayed for appropriate writ or order to restrain the respondent authorities from appointing the Administrator under Section 11(5) of the Agriculture Produce Markets Act ("the Act" for short) and also to direct the

respondents to extend the term of the petitioner APMC till the elected body takes over the charge.

2. It appears that, immediately after the petition was filed, by order dated September 15, 2003 the State Government appointed the Administrator. Hence, the petitioner obtained leave to amend the petition for challenging the said order dated September 15, 2003. When the petition reached admission hearing on September 23, 2003, after hearing the learned counsel for the parties, this Court admitted the petition, and by way of ad-interim order, directed the Administrator to continue to hold the office as Administrator of the Market Committee, but he shall not take policy decision, nor shall he create, in any manner whatsoever, any hurdle or obstructions to the process of the election which was scheduled to be held on October 18/19, 2003. Thereafter, elections were held and petitioner No.2, who was the Chairman of the outgoing APMC, was again elected as a member at the elections held in October, 2003 and he is also elected as the Chairman of the APMC on November 7, 2003. The elected body has taken over the charge from November 7, 2003, and, therefore the question of examining legality or otherwise of the order dated September 15, 2003 appointing the Administrator would not survive.

3. Mr.Jhaveri has, however, made a grievance that the respondent authorities have been resorting to the device of appointing the Administrator on the eve of the election and that this practice is not only illegal but also contrary to the democratic process.

4. While admitting the petition, the learned Single Judge did make a reference to certain decisions of this Court having a bearing on controversy involved. In Abdulgani Abdulbhai Kureshi and another Vs. State of Gujarat and another, reported in 1992(1) GLR 503, a Division Bench of this Court held that the Councillors of the Municipal Corporation might have misconducted themselves and there may be existing circumstances analogous to these enumerated by Section 452(A) of the BPMC Act. If such grounds exist, during the five year term, the Corporation could have been superseded. If they exist at the end of the term, it would be a legitimate ground for the State to refuse the extension to such Councillors.

5. In Varvabhai Nathabhai Rabari & Ors. vs. State of Gujarat & Ors., 2003 (1) GLR 97 a Division Bench of this Court examined the scope of judicial review in a

petition under Article 226 of the Constitution challenging the order of supersession of Agricultural Produce Market Committee under Section 46 of the Agricultural Produce Market Committee Act. After examining several decisions of the Apex Court and a decision of this Court and another decision of the Bombay High Court, the Division Bench laid down that in the matter of supersession of any elected body, the scope of judicial scrutiny and review under Article 226 of the Constitution is not that of exercising powers of Court of appeal, but is only restricted to procedural aspects on the point of principles of natural justice or in a case where the order is so perverse that no authority will form such an opinion on the basis of the record available with it.

The Apex Court in Joint Registrar of Cooperative Societies, Madras vs. P.S. Rajagopal Naidu & Govindarajulu & Ors., AIR 1970 SC 992 and a Division Bench of this Court in V.N. Rabari vs. State of Gujarat, 2003 (1) GLR 97, have held that the order of supersession against an elected local self government body is apparently to appoint a Special Officer in order to set the working of the public body right and where maladministration by an elected committee has so adversely affected the functioning of the public body, it is essential in the interest of the public body that temporarily the control of the affairs of the body is given to a neutral authority.

6. It, therefore, appears to the Court that the dispute about non-extension of the term of the APMC can arise only where the order of supersession is challenged before a Court or an appellate authority and operation and implementation of such order of supersession is stayed. Even in such a case, it would depend on the grounds on which the Court or the appellate authority has granted interim stay of the order of supersession or even quashed the same. If the interim stay or the final order of quashing is based only on violation of procedural requirements, the Government may not be expected to extend the term of the APMC.

It is only where the Court or the appellate authority has found the order of supersession not only illegal or prima-facie illegal but where the order of supersession is found to be arbitrary and perverse or malafide or even at the prima-facie stage the Court finds the order of supersession so arbitrary and perverse or even malafide that the Court considers it to be a fit case for granting interim relief or in a given case even

final relief on such ground that the question whether the Government should extend the term of the APMC or not will require serious consideration. It is only where the Court or the appellate authority has found the order of supersession to be so arbitrary and perverse or even malafide that the Government's decision to refuse the extension of the term of the APMC can prima-facie be viewed with distrust. A mere stay (against the order of supersession) by itself does not mean that the Government's decision to refuse extension of the term of the APMC must be considered to be arbitrary or illegal. The grounds on which the APMC has been superseded and the findings which the Court may give finally or at the interim stage regarding arbitrariness, perversity or malafides will be very crucial findings. Coupled with such findings where the delay for holding the elections is attributable to the authorities who are entrusted with the duty of holding elections and no explanation is forthcoming for such delay, then only it can be said that the Government's decision to refuse extension of the term of the APMC may be considered to be arbitrary or malafide and, therefore, illegal.

7. Subject to the aforesaid observations, this petition is disposed of. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

(M.S.Shah,J)
(pathan)